

George Haines, Esq.
Nevada Bar No. 9411
David Krieger, Esq.
Nevada Bar No. 9086
HAINES & KRIEGER, LLC
1020 Garces Ave.
Las Vegas, NV 89101
Phone: (702) 880-5554
FAX: (702) 385-5518
Email: info@hainesandkrieger.com
Attorney for Yuko Otake

E-FILED: September 15, 2009

UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

In Re:) Case No. BKS-09-16447-LBR
Yuko Otake,) Chapter 13
)
)
)
) Hearing Date: September 30, 2009
Debtor(s).) Hearing Time: 10:00 AM
)
)
)

DEBTOR'S OPPOSITION TO MOTION FOR
RELIEF FROM AUTOMATIC STAY AND/OR REQUEST FOR RENOTICING
UNDER NRS 107.080 (AS REQUIRED UNDER NEVADA ASSEMBLY BILL 149
EFFECTIVE JULY 1, 2009)

COMES NOW, Yuko Otake, by and through attorney, George Haines, Esq., of the LAW OFFICES OF HAINES & KRIEGER, LLC, and in response to **THE BANK OF NEW YORK, FKA THE BANK OF NEW YORK AS SUCCESSOR IN INTEREST TO JP MORGAN CHASE BANK NA AS TRUSTEE FOR STRUCTURED ASSET MORTGAGE INVESTMENTS II INC. BEAR STEARNS ALT-A TRUST 2005-10, MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2005-10's** ("Creditor") Motion for Relief from Automatic Stay states as follows:

1. On April 27, 2009, Debtor filed the current Chapter 13 Petition in Bankruptcy with the Court.

2. Debtor's Plan provides that Debtor would continue to make direct payments to Creditor, while under the protection of the automatic stay of the Bankruptcy Court.

3. Debtor's Chapter 13 Plan provides for all payments in arrears through the and the post-petition payment for May, 2009 (*see Debtor's Chapter 13 Plan attached hereto as Exhibit "1"*).

4. After the Debtor's Petition in Bankruptcy was filed, Debtor made two post-petition payments for June and July, 2009 (*see Proof of Payments attached hereto as Exhibit "2"*).

5. On or around May 19, 2009, Debtor began to negotiate a loan modification through a third party company called Learn Your Rights (*see Loan Modification Retainer agreement attached hereto as Exhibit "3"*).

6. Debtor has kept in contact with a loan modification specialist named Grace Bobe at 702-369-2529 for updates.

7. Debtor has received a letter from Kim Dehning with ASC stating that the loan modification has been submitted and is in the process of being reviewed for decision. The letter states that it could take 30-45 days to review (*see Letter from ASC attached hereto as Exhibit "4"*).

8. On or about September 02, 2009, Creditor filed a Motion for Relief from the Automatic Stay.

9. Debtor believes that the asset securing THE BANK OF NEW YORK, FKA THE BANK OF NEW YORK AS SUCCESSOR IN INTEREST TO JP MORGAN CHASE BANK NA AS TRUSTEE FOR STRUCTURED ASSET MORTGAGE

INVESTMENTS II INC. BEAR STEARNS ALT-A TRUST 2005-10, MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2005-10's claim is necessary to the Debtor's effective reorganization.

10. Accordingly, Debtor requests Creditor's motion be denied or continued until the loan modification is completed.

11. In the event this Court is inclined to grant secured creditor's request for relief from the automatic stay, the Debtor requests that Your Honor require Secured Creditor to renounce any pending foreclosure action under NRS 107.080 (as revised by Nevada Assembly Bill 149, effective July 1, 2009) by this Creditor to the extent applicable.

12. Pursuant to NRS 107.082 if a foreclosure "sale has been postponed by oral proclamation three times, any new sale information must be provided by notice as provided in NRS 107.080." NRS 107.080 (as revised by Nevada Assembly Bill 149 effective July 1, 2009) requires Secured Creditor to provide Debtor a notice of election to enter into court mandated mediation.

WHEREFORE, Debtor requests:

1. THE BANK OF NEW YORK, FKA THE BANK OF NEW YORK AS SUCCESSOR IN INTEREST TO JP MORGAN CHASE BANK NA AS TRUSTEE FOR STRUCTURED ASSET MORTGAGE INVESTMENTS II INC. BEAR STEARNS ALT-A TRUST 2005-10, MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2005-10's Motion be denied or continued until the loan modification is completed; and/or

2. In the event Your Honor grants relief from stay, that Secured Creditor be required to renote its foreclosure proceeding pursuant to Revised NRS 107.080 (as effective through Nevada AB 149, July 1, 2009), thus providing the Debtor an opportunity to elect court mandated mediation in State Court.
3. Such other relief as the Court finds appropriate.

Dated: September 15, 2009

/s/ David Krieger, Esq.
Attorney for Debtor(s)

CERTIFICATE OF MAILING RE:
DEBTOR'S OPPOSITION TO MOTION FOR
RELIEF FROM AUTOMATIC STAY

I hereby certify that on September 15, 2009, I mailed a true and correct copy, first class mail, postage prepaid, of the above listed document to the following:

/s/George Haines, Esq.
Attorney for Debtor

Gregory Wilde
208 S. Jones Blvd
Las Vegas, NV 89107